

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

SOVEREIGN ASSETS LTD. AND GUY GISSIN,
Debtor in Foreign Proceeding.

Case No. 14-13009 (scc)
New York, New York
December 3, 2014
11:23 a.m. - 12:35 p.m.

TRANSCRIPT

- 14-13009-SCC SOVEREIGN ASSETS LTD.
AND GUY GISSIN, CHAPTER 15 -

STATUS CONFERENCERE

BEFORE THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

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12 *(Proceedings recorded by electronic sound recording)*

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1 THE COURT: All right. Thank you all for coming down
2 today. My chambers reached out to you because this frankly has
3 not been presented in a way that I'm used to seeing things
4 presented. Unless I missed something, we never had a discussion
5 about what a contested recognition hearing would look like. Did
6 we?

7 MR. DEVORKIN: No, not at a time I appeared, Your
8 Honor.

9 THE COURT: No, we didn't. So, for example, this is
10 what I have as opposed to having given me the opportunity to
11 talk to you about whether we want to have testimony by --
12 evidence by declaration; live testimony. None of that occurred.
13 And this wasn't presented in any sort of organized fashion. So
14 it's rather like just a document dumped on me.

15 Moreover, there have been issues that have been raised
16 that it might have been useful to discuss whether or not in fact
17 we're going to talk about them today. For example whether or
18 not there should be relief from the stay or relief from the
19 relief provided on a recognition order with respect to the
20 Nashville Plaintiffs. So I don't want to be unduly harsh, but
21 this simply was not presented in a way that it should have been.

22 I've read everything and I guess I'm still a little
23 confused about what folks think is going to happen without there
24 being any cross examination. This is just -- it's being
25 presented in a somewhat unusual way. I'm not trying to lay

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1 blame. To the extent that we weren't proactive in helping you
2 do it the right way, I apologize, but it is what it is.

3 MR. DEVORKIN: Well, I'm not -- I take everything you
4 say to heart, Your Honor. Michael Devorkin, for the
5 Petitioners, Golenbock Eiseman Assor Bell & Peskoe. And sitting
6 right next to me is Marc Rosenberg and Elizabeth Conway from my
7 office.

8 Until we received the papers ten days ago, and this is
9 not by any way of apologizing or excusing anything Your Honor is
10 concerned about; we didn't know whether anything was contested.
11 But our view is -- that being said --

12 THE COURT: Right.

13 MR. DEVORKIN: -- our view really is that on the legal
14 issues, Your Honor has to determine there really are no relevant
15 contested facts.

16 THE COURT: On recognition.

17 MR. DEVORKIN: On recognition. I think on -- and we
18 could almost go through that today --

19 THE COURT: Right.

20 MR. DEVORKIN: -- why we think that's the case.

21 THE COURT: Okay. But this is what -- it would have
22 been helpful to -- from my perspective, what occurred was there
23 was an ex-parte TRO, right? And then there were some consensual
24 extensions of time. And then the next that happened was this.
25 And then at that point, it would have been useful to clarify who

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1 wants to do what to whom. Because I think that you're right.
2 On the narrow issue on recognition and I haven't met the folks
3 on the other side, yet; but on the narrow issue of recognition,
4 in my view, nobody really raises anything of interest.
5 Recognition is basically a check-the-box exercise. So to the
6 extent that that the opposition believes that they are raising
7 questions of fact that preclude my entering an order recognizing
8 the Israeli proceeding, I'm not seeing it that way.

9 I mean the most I think is that there seems to be an
10 argument that § 1506 applies and that because of everything
11 that's gone before, it would be manifestly contrary to public
12 policy to recognize the case -- to recognize the proceeding.
13 But on the issues of COMI, the collective nature of the
14 proceeding, the compliance with § 109, under Barnett, all that,
15 I don't feel that I need to have an evidentiary hearing. So
16 that's kind of the first level of questions. Then you get to,
17 am I going to enter an order that just gives you all the relief
18 or does someone have something to say about why the relief
19 should be less than what would ordinarily follow from
20 recognition.

21 MR. DEVORKIN: If I can pick up --

22 THE COURT: So, I hope I'm making my concerns clearer
23 to you.

24 MR. DEVORKIN: I think so. Yes, you are, Your Honor.
25 I just wanted to say again, I guess by way of explaining

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1 ourselves in terms of what we conveyed to Your Honor's clerk
2 yesterday is we do have somewhat of a logistic problem which was
3 somewhat at least driving my thinking. I agree 100 percent with
4 Your Honor. We don't think there's a contested factual issue on
5 recognition. And for reasons I can address, I don't think
6 there's a real contested issue on preliminary injunction. But
7 let's just put that to the side for a second.

8 Mr. Gissin, who's one of the Petitioners, is in the
9 courtroom with two other colleagues from Israel that are in the
10 office of Mr. Kogan, the other Petitioner. Mr. Samir, he's a
11 lawyer in Israel, and Mr. O'Had Carell and Michael Henshin are
12 seated next to him.

13 THE COURT: Okay.

14 MR. DEVORKIN: And Mr. Gissin was going to be my
15 witness. He's the one who submitted the reply declaration --

16 THE COURT: Right.

17 MR. DEVORKIN: -- and he's been here all week. I
18 think he would testify today because, as Your Honor is probably
19 aware, he intended to fly out tonight.

20 THE COURT: Okay.

21 MR. DEVORKIN: It's difficult to fly out on Thursday
22 night --

23 THE COURT: I understand.

24 MR. DEVORKIN: -- and get back in Israel before the
25 Sabbath.

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1 THE COURT: I understand.

2 MR. DEVORKIN: And if he had to testify for any
3 reason, and I don't think he really addresses the preliminary
4 injunction issues. But if he had to testify --

5 THE COURT: Well, this is where -- I want to try to
6 move forward instead of --

7 MR. DEVORKIN: Okay.

8 THE COURT: -- harping on what happened in the past.
9 But if no one wants to cross examine Mr. Gissin, then he can go
10 to the airport later today.

11 MR. GISSIN: Thank you. My wife thanks you.

12 THE COURT: Okay. So, if nobody intends to do that,
13 but I couldn't be in a -- I just simply did not know --

14 MR. DEVORKIN: Understood. So, I was trying to be
15 accommodating to the -- I raised this this, I think, the first
16 instance, because I was trying to be accommodating to the other
17 side to see whether they had that interest. And if they would,
18 I was willing to dispense with cross examining their witnesses
19 because of my legal views about where we are on the facts.

20 THE COURT: Okay. So why don't I hear from the
21 objectors. And to the extent that we have everybody here, we
22 can get as much accomplished today as we can. One of the issues
23 was not really appreciating the scope of the objections and I
24 had a matter scheduled at 1:00. Well, I'm now getting a
25 communication from that very large group of people that they may

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1 not want to come down until 2:00 or 3:00. So I'm trying to
2 balance all of you as best I can. So let me hear from the
3 objectors. First with respect to the issue of recognition.
4 Because the objections -- well, let me not characterize.

5 MR. BENSINGER: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. BENSINGER: Menachem Bensinger, from McGrail &
8 Bensinger, on behalf of Abraham Poznanski.

9 THE COURT: Okay.

10 MR. BENSINGER: I may be responsible for the biggest
11 pile of papers over there.

12 THE COURT: You are.

13 MR. BENSINGER: Okay. Well, I apologize if that's
14 needed. Your Honor, our feeling with respect to recognition as
15 it relates to live testimony and cross examination, is we feel
16 like the record that's before this Court is sufficient for our
17 arguments, unless Mr. Devorkin feels the need to put on live
18 testimony in which case as he and I discussed. Then once
19 witnesses are here, then it changes the analysis of what
20 witnesses need to come to rebut. But just based on what's
21 before this Court right now, we're okay moving without cross
22 examining Mr. Gissin.

23 THE COURT: Okay. And is Mr. Poznanski here?

24 MR. BENSINGER: He is not.

25 THE COURT: Okay.

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1 MR. BENSINGER: We believe --

2 THE COURT: And nobody wishes to cross examine Mr.
3 Poznanski?

4 MR. DEVORKIN: Can I consult with my client?

5 THE COURT: Sure.

6 MR. DEVORKIN: Your Honor, I think because his
7 testimony does bridge over into the preliminary injunction
8 issue, I think I'd like to reserve on that until we have some
9 further discussion about that.

10 THE COURT: Well see, that's the thing and that's
11 where getting together might have provided some clarity. And
12 again I apologize for my role in that. I have a lot of other
13 things. A lot of other groups like you that I have to deal
14 with. But to me I don't quite understand how you think you
15 might prevail on the preliminary injunction without providing
16 something more than what you've provided. I mean that's just
17 the reality.

18 So, you've given me -- in papers you've given me a
19 version of some of the facts but the point of having a
20 preliminary injunction hearing is to have a preliminary
21 injunction hearing, you know, a substantial likelihood of
22 success on the merits, etcetera. And I don't believe that
23 anything that you've supplied really you know rebuts the
24 allegations that have been put forward. So they have the burden
25 of going forward and then you have your own burden. I mean I

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1 don't want to turn this into law school, which is part of the
2 problem that I'm having.

3 So, we could wade into it and see what happens. And
4 I'm prepared to keep going today and actually go to the actual
5 hearing, as opposed to continuing to treat this as a status
6 conference, which is what I had suggested yesterday in light of
7 at least my confusion. But if all the parties in interest are
8 here and prepared to proceed, then let's just do it.

9 MR. BENSINGER: Well, Your Honor, with respect to that
10 point, I'm now starting to hear some uncertainty from Mr.
11 Devorkin as to whether he wants to put witnesses on. And if
12 that's the case, specifically with respect to the TRO, then
13 perhaps we would call our witness. So I apologize that this
14 wasn't worked out beforehand. I agree. I'm not disagreeing
15 with the Court.

16 THE COURT: Okay. But if he's -- he's seeking the
17 preliminary injunction. If he's prepared to proceed without a
18 witness, and you don't have a witness, then I'll rule.

19 MR. BENSINGER: Well, Your Honor, as we've expressed
20 in brief, we believe he has the burden. So that was the basis
21 for the initial statement.

22 THE COURT: Okay.

23 MR. BENSINGER: That said, based upon what I'm hearing
24 now, which is a different conversation than what he and I had
25 earlier, we might like to have our witness hear, and I of course

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1 would have had him here had thought this might be an actual
2 hearing.

3 THE COURT: Okay. But let me ask again. Does
4 Sovereign intend to call any witnesses in support of the
5 preliminary injunction?

6 MR. DEVORKIN: No.

7 THE COURT: So, no.

8 MR. BENSINGER: Your Honor, based upon the comments
9 today I'm hearing though, I'm going to discuss with my client
10 whether he'd like to testify. And of course he would have been
11 here had there been a hearing. He was planning on being here
12 tomorrow, but I thought this was a pre-trial.

13 THE COURT: Well, then let's do recognition today. Or
14 let's do the whole thing tomorrow and you can get your act
15 together. This all should have been worked out in advance. Set
16 forth in a letter or a pretrial order of some kind and not just
17 made up on the fly. So, I need you to tell me what you'd like
18 to do.

19 MR. BENSINGER: Your Honor, perhaps the parties,
20 unless anybody else here wants to speak, could have a few
21 minutes to confer amongst themselves. Does that make sense?

22 MR. DEVORKIN: It's fine with me.

23 MR. BENSINGER: Okay.

24 THE COURT: Again, I'll reiterate. I believe on
25 recognition, despite the volume of the papers, I don't think

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1 there are any factual issues. I don't think there are any
2 genuine factual issues with respect to recognition of the
3 foreign proceeding. I mean I know that there are allegations
4 that have been made about operation of the United States versus
5 Israel, but giving you my tentative view that under the regime
6 established in Chapter 15 and based on the declaration of Mr.
7 Gissin and all the supporting papers, nothing rises to the level
8 of a factual issue in my view.

9 MR. BENSINGER: Well, of course, Your Honor, we would
10 appreciate the opportunity to attempt to convince the Court
11 otherwise.

12 THE COURT: Okay. All right. Well, do you want to
13 talk about what we do today versus coming back tomorrow? What
14 time did we give you tomorrow?

15 MR. BENSINGER: 1:00 p.m.

16 MR. DEVORKIN: One o'clock.

17 THE COURT: One o'clock. I would like though to not
18 penalize Mr. Gissin and the other folks from Israel by causing
19 them to have to stay if at all possible. It just doesn't see
20 that that's on anybody's -- the possibility of anybody's radar
21 screen at this point.

22 MR. DEVORKIN: Our position, Your Honor, is they
23 don't, although they'd like to watch the argument, and find it
24 interesting if they could, they don't have to be here for that.

25 THE COURT: Okay.

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1 MR. DEVORKIN: And just so we're also clear, I'm
2 proffering their testimony through their --

3 THE COURT: Through the declarations.

4 MR. DEVORKIN: -- declarations. And both sides agree
5 on that, that's direct testimony.

6 THE COURT: Right.

7 MR. DEVORKIN: And if --

8 THE COURT: And then you're telling me you had an
9 agreement that there was going to be no cross examination.

10 MR. DEVORKIN: Right. But it's mutual. But if Mr. --

11 THE COURT: Poznanski.

12 MR. DEVORKIN: -- Poznanski -- I'm sorry -- Mr.

13 Bensinger wants to cross examine Mr. Gissin, the only thing I
14 ask is that he tell us now and do that, so I can let him go. If
15 he's not going to cross examine him, I'm not going to offer him
16 on preliminary injunction issues. He's really a witness on the
17 recognition issues only. He doesn't have knowledge about the
18 preliminary injunction issues.

19 THE COURT: Okay.

20 MR. DEVORKIN: I don't need him for that.

21 THE COURT: Okay.

22 MR. DEVORKIN: And I'm perfectly happy to have them
23 have Mr. Poznanski testify about either of those issues. And I
24 don't need Mr. Gissin in reply for that.

25 THE COURT: Okay. So Mr. Bensinger, it seems that no

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1 matter what you decide about calling Mr. Poznanski that we ought
2 to be able to allow Mr. Gissin to leave.

3 MR. BENSINGER: Not necessarily, Your Honor. Given
4 our conversations today, I might in fact like to ask Mr. Gissin
5 some questions.

6 THE COURT: Well, but here's the thing. You know,
7 really this is not supposed to be let's make a deal. You're not
8 supposed to be able to hear my concerns about the presentation
9 of the papers and then change the playing field. So to the
10 extent that I've created this problem by saying this was a pre-
11 trial conference, before we said that presumably you had made a
12 decision to not cross examine Mr. Gissin. And we ought to stick
13 by that.

14 MR. BENSINGER: Your Honor, actually the decision was,
15 the most recent email from Mr. Devorkin was he was reserving his
16 opinion. He wanted to wait and see what the judge said about a
17 hearing today. So that's where we left things.

18 MR. DEVORKIN: That's correct. But I'm saying --

19 THE COURT: He's saying now --

20 MR. BENSINGER: Well, that's fine. But given that he
21 reserved for the hearing, and we're at the hearing now, it's
22 only fair for me to have the opportunity to consider the same
23 factor he wanted to consider.

24 THE COURT: Okay. So consider it's twenty minutes to
25 twelve.

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1 MR. BENSINGER: Okay.

2 THE COURT: All right. And I'm asking --

3 MR. BENSINGER: I'd like a few minutes.

4 THE COURT: And I'm asking you. We can take a short
5 recess; talk to each other; figure out what you want to do. But
6 included in that you ought to, presumably since before you heard
7 from my chambers, you were prepared or not to cross examine Mr.
8 Gissin; what I'm saying is that let's try to accomplish that
9 today out of just simple courtesy.

10 MR. BENSINGER: Understood.

11 THE COURT: As long as you can't articulate a way in
12 which that compromises your client's due process rights, which I
13 certainly do not want to do.

14 MR. BENSINGER: Understood.

15 THE COURT: All right?

16 MR. BENSINGER: Okay.

17 THE COURT: So let's try to make some order out of
18 this confusion and find a path forward. I'm not sure whether my
19 one o'clock crowd is coming in or not. Even if they are, and
20 you want to continue to proceed starting at two o'clock or three
21 o'clock, I'll do everything I can to help you move forward. All
22 right?

23 MR. BENSINGER: Okay, thank you.

24 THE COURT: So why don't -- we'll go back into
25 chambers. I know the other -- counsel for the Nashville

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1 Plaintiffs is here.

2 MR. CAVALIERE: Yes.

3 MR. ROSENSTOCK: Yes, we are.

4 THE COURT: Okay. Good morning.

5 MR. CAVALIERE: Good morning.

6 MR. ROSENSTOCK: Good morning, Your Honor.

7 MR. CAVALIERE: Rocco Cavaliere, Tarter Krinsky, on
8 behalf of the Nashville Plaintiffs.

9 THE COURT: Okay.

10 MR. ROSENSTOCK: And Lawrence Rosenstock, Markewich
11 and Rosenstock.

12 THE COURT: Okay.

13 MR. ROSENSTOCK: Also on behalf of the Nashville
14 Plaintiffs.

15 THE COURT: Okay.

16 MR. CAVALIERE: Your Honor, could I just --

17 THE COURT: Yes.

18 MR. CAVALIERE: On factual issues, we agree we have no
19 concern about taking testimony. As far as legal argument on any
20 issue, frankly, we thought today was a status conference.

21 THE COURT: That's fine.

22 MR. CAVALIERE: The reply was quite extensive. There
23 was a bunch of case law in it. We'd like to go through that,
24 the legal argument both on the recognition and the preliminary
25 injunction. And we are prepared to do that tomorrow at 1:00

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1 p.m. But we can certainly go over some issues today. To the
2 extent there's an issue about Mr. Poznanski's direct testimony
3 or cross examination, we're happy to take a break and discuss
4 it.

5 MR. BENSINGER: So, Your Honor, if I understand this
6 correctly, one party is unable to proceed on the merits today.
7 Is that --

8 THE COURT: Well, we indicated that today was a pre-
9 trial conference.

10 MR. BENSINGER: Right. Okay.

11 THE COURT: So, that's what we did, but what I'm
12 saying to you is that given how things have evolved, I don't
13 want -- I'd like to be able to allow the folks from Israel to go
14 home today.

15 MR. BENSINGER: Understood.

16 THE COURT: So that they can get home before Shabbat
17 in Israel.

18 MR. BENSINGER: Okay.

19 THE COURT: And given that nobody has yet to identify
20 a topic on which they want to cross examine Mr. Gissin, then
21 there doesn't seem to be any impediment to his going on.

22 MR. BENSINGER: Okay.

23 THE COURT: All right? So why don't we take a recess.
24 Somebody come and knock on my chamber's door when you're ready,
25 and we'll come out and we'll come up with a definitive game

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1 plan.

2 MR. BENSINGER: Okay. Very good.

3 THE COURT: Okay?

4 MR. BENSINGER: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. CAVALIERE: Thank you, Your Honor.

7 (Off the record.)

8 THE COURT: All right. Have we solved the world's
9 problems? Or at least some of ours?

10 MR. BENSINGER: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 MR. BENSINGER: Menachem Bensinger, Abraham Poznanski.
13 Your Honor, we are going to cross examine Mr. Gissin
14 now. So that he can take his flight back to Israel.

15 THE COURT: Okay.

16 MR. BENSINGER: And this will be with respect to
17 recognition and other points in his declaration. Assuming --
18 well, depending on how that goes, if I need a rebuttal witness,
19 I'll put Mr. Poznanski on tomorrow. But that way, Mr. Gissin
20 can exit this country.

21 THE COURT: All right. Now, does anybody have a
22 problem with proceeding in that fashion now?

23 MR. DEVORKIN: I think -- we were just going to
24 consult maybe if we took a half an hour for lunch. He doesn't
25 have his papers. He wants me to help give him some of the

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1 papers so he can use.

2 THE COURT: Yeah.

3 MR. DEVORKIN: So, we'll go get --

4 MR. BENSINGER: I'll need a little time to prepare the
5 questions. I wasn't prepared for that. But an hour should be
6 fine.

7 THE COURT: Okay. But to be fair, we all knew there
8 was going to be a hearing today. You people thought there was
9 going to be a hearing today until we called and said what's
10 going on. So I just want to cut off at the pass any sense that
11 there is any unfair surprise or unfairness here. Because going
12 into what you thought was going to be a hearing today. You
13 could have advised counsel that you wanted to cross examine. So
14 I just don't want there to be an appearance on the record that
15 somehow this Court forced anyone's hand; caused anybody to be
16 deprived of their due process rights; or the like.

17 We're in this situation because all of the
18 conversations that have occurred here today didn't occur
19 earlier. So I just want to be very clear on that score. All
20 right? And you folks, you too, could have said hey, we want to
21 cross examine Mr. Gissin before.

22 MR. CAVALIERE: Correct, Your Honor. And so I don't
23 stand to take any issue with regards to the cross examination.

24 THE COURT: Okay.

25 MR. CAVALIERE: And I did clarify with Mr. Devorkin

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1 and his co-counsel that as far as the evidentiary hearing is
2 concerned, we have no issue, but my comments before are still
3 valid, and they don't disagree that legal argument with regard
4 to recognition, we'll still go forward tomorrow.

5 THE COURT: Sure. Sure.

6 MR. CAVALIERE: I just wanted to clarify.

7 THE COURT: Okay. All right. So, then why don't we
8 take a half an hour, 45 minutes, what works for you? My one
9 o'clock just got cancelled, so I have a little more runway in
10 the afternoon.

11 MR. BENSINGER: I'd like an hour, Your Honor. I need
12 to prepare my Q&A.

13 THE COURT: All right. So, we'll take an hour. We'll
14 reconvene at 1:30. Mr. Gissin, you'll take the stand. We'll
15 conclude with that. And then we will have the balance of the
16 hearing tomorrow.

17 MR. BENSINGER: Okay. Your Honor, on a logistics'
18 question --

19 THE COURT: Yes?

20 MR. BENSINGER: I don't have all the documents that I
21 needed. Is there a way to print things in the Court if nobody
22 has them here? It would be stuff that's on the record.

23 THE COURT: Well, it depends on the volume.

24 MR. BENSINGER: I want ten copies of my pleadings.

25 THE COURT: Ten --

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1 MR. BENSINGER: A joke, Your Honor. That was just a
2 joke.

3 THE COURT: Oh, that was a joke?

4 (Laughter.)

5 THE COURT: I don't have a good sense of humor. What
6 do you want copied?

7 MR. BENSINGER: Just the declarations. If they have
8 copies that's fine. But he submitted I believe two. Mr. Kogan
9 submitted one and Mr. Gissin submitted one. The declarations in
10 support of the original papers, and the reply. I don't
11 remember --

12 MR. DEVORKIN: Why don't we talk about this? I don't
13 know how many -- I have my own copy that I need. We'll see what
14 we have extra here before we burden the Court.

15 THE COURT: At Docket 2, is the declaration; Docket 3
16 is Mr. Kogan's declaration. And there's the reply declaration
17 that has a lot of attachments to it. So this would be very
18 difficult for me to copy this.

19 MR. DEVORKIN: Well, why don't we not bother the
20 Court? We'll talk together and figure it out.

21 MR. BENSINGER: I'll see if we could figure it out.
22 If we need something printable.

23 THE COURT: These two I can give you. But these, no.

24 MR. DEVORKIN: You want the exhibits too? Or what do
25 you want?

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1 THE COURT: I mean if you want the exhibits that's --

2 MR. BENSINGER: Do you have a full copy with the
3 exhibits?

4 MR. DEVORKIN: Well, why don't we not bother the
5 Court?

6 MR. BENSINGER: We'll discuss it. Okay.

7 MR. DEVORKIN: Why don't we figure this out ourselves?

8 MR. BENSINGER: That's fine.

9 THE COURT: See you at 1:30.

10 MR. DEVORKIN: Thank you, Your Honor.

11 MR. BENSINGER: Thank you, Your Honor.

12 THE COURT: You can leave whatever you want here.

13 MR. BENSINGER: Okay. Thank you.

14 ALL COUNSEL: Thank you, Your Honor.

15 THE COURT: Sure.

16 (Cross-talk.)

17 (Off the record.)

18 THE COURT: Ready to go?

19 MR. BENSINGER: Yes, Your Honor.

20 THE COURT: All right. Mr. Gissin? Am I pronouncing
21 your name correctly?

22 MR. GISSIN: Yes. Very Good.

23 THE COURT: Okay. Have a seat.

24 Would you raise your right hand please, sir? Do you
25 solemnly swear or affirm that all the testimony you're about to

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23

1 give before the Court shall be the truth, the whole truth, and
2 nothing but the truth?

3 MR. GISSIN: I do.

4 THE COURT: All right. Thank you. As a housekeeping
5 matter, shall we move into evidence the declarations?

6 MR. DEVORKIN: I'm going to do that, Your Honor.

7 THE COURT: Okay.

8 MR. DEVORKIN: The Petitioner's move into evidence Mr.
9 Gissin's and Mr. Kogan's declarations with the petition and its
10 exhibits that were filed at the beginning of the case. And
11 Gissin's reply declaration, dated December 1, 2014, with
12 Exhibits 13 through 25. The original exhibits were 1 through
13 12.

14 THE COURT: Right. Okay. Any objection to the
15 admission into evidence of those three declarations?

16 (No response.)

17 THE COURT: All right. Okay. So, those are in
18 evidence.

19 (Trial Exhibit 1, Gissin's declaration; Exhibit 2,
20 Kogan's declaration w/petition and its exhibits; and Exhibit 3
21 Gissin's reply declaration, dated December 1, 2014 in evidence.)

22 MR. DEVORKIN: It's with the petition, Your Honor.

23 THE COURT: Of course.

24 MR. DEVORKIN: That's what he verified.

25 THE COURT: Well, the -- yes. The petition -- I don't

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24

1 know that the petition needs to be moved into evidence. It's a
2 part of the record. But the declarations have been submitted as
3 evidence. So they need to be moved into evidence as part of the
4 record. So all of that is in. The table is set for your cross
5 examination.

6 MR. BENSINGER: On that housekeeping note, Your
7 Honor --

8 THE COURT: Yes?

9 MR. BENSINGER: -- we also would move to put into
10 evidence Mr. Poznanski's affidavit, which has been filed with
11 this Court as well in opposition to recognition.

12 MR. DEVORKIN: I have no objection.

13 THE COURT: Okay. All right. So Mr. Poznanski's
14 affidavit, which is I believe filed at Docket 19, and it has a
15 number of exhibits. That's in evidence as well.

16 (Trial Exhibit 4, Poznanski's declaration w/exhibits
17 in evidence.)

18 MR. BENSINGER: Thank you, Your Honor.

19 MR. ROSENSTOCK: Your Honor, would it be appropriate
20 just to move in a declaration that was submitted on behalf of
21 Nashville, so the record will be complete on the objections? So
22 at least the record will be --

23 THE COURT: Any objection to moving in that
24 declaration?

25 MR. DEVORKIN: No objection.

Guy Gissin - Cross (Bensinger)

25

1 THE COURT: Okay.

2 MR. BENSINGER: No.

3 THE COURT: Very good. Thank you.

4 (Nashville declaration in evidence.)

5 (Guy Gissin, the Witness, Sworn.)

6 CROSS EXAMINATION

7 BY MR. BENSINGER:

8 Q Good afternoon, Mr. Gissin. My name is Menachem Bensinger.
9 I'm an attorney. And represent Abraham Poznanski in this
10 matter. Could you please tell me very briefly in what capacity
11 you're here in this court today?

12 A I'm the special administrator -- one of two special
13 administrators of Sovereign Assets Ltd., which is an Israeli
14 corporation, public corporation.

15 Q Okay. And is there currently a liquidation proceeding
16 pending in Israel with respect to Sovereign Assets Ltd.?

17 A I'm not sure if pending is the right word. There is an
18 order for liquidation.

19 Q Okay. And when was that order entered?

20 A Something around July.

21 Q Okay.

22 A The order was given. The request was filed in March or so.

23 Q So if I understand you correctly, the request for an order
24 for liquidation was made to the court in Israel in March of
25 2014, and the court entered an order answering that request in

Guy Gissin - Cross (Bensinger)

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1 July of 2014. Is that correct?

2 A That's correct.

3 Q Okay. Are you taking any medication today or is there any
4 other reason why you would not be able to testify truthfully
5 today?

6 A No.

7 Q Okay.

8 MR. BENSINGER: I'm going to hand the witness a copy
9 of a document titled "Declaration of Adv. Guy Gissin, Petitioner
10 in support of petition under Chapter 15 of the Bankruptcy Code
11 for Recognition of a Foreign Main Proceeding."

12 MR. DEVORKIN: Will you be marking it?

13 MR. BENSINGER: I'm going to mark this as Poznanski 1.
14 (Previously marked as Trial Exhibit 1.)

15 THE COURT: Okay.

16 Q Mr. Gissin, I just handed you a document, correct?

17 A Yeah.

18 Q Do you recognize this document?

19 A Yeah, I do.

20 Q What is this document?

21 A This is a declaration I signed in the office of my
22 attorneys about a month ago when we filed the petition.

23 Q And familiar with what you stated in your declaration,
24 correct?

25 A Yeah.

Guy Gissin - Cross (Bensinger)

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1 Q Okay. Now, your declaration at paragraph 2, and I'll
2 paraphrase, says that you're familiar with all the legal
3 documents and legal proceedings pertaining to SAL and its
4 subsidiaries. Is that accurate?

5 A If that's what it says, it's accurate.

6 Q Okay. Would you mind reading paragraph 2 for a minute and
7 telling me what it says?

8 A Yes. "I have read the full-length petition and the
9 accompanying ex-parte motion for provisional relief and order to
10 show cause. I and my staff have reviewed all the documents."
11 Okay.

12 Q Okay. So are you familiar with all of the documents that
13 your American attorneys have filed in this matter?

14 A I guess so.

15 Q Is that a yes?

16 A Yes.

17 Q Okay. Thank you.

18 MR. BENSINGER: I'm going to hand a document to Mr.
19 Gissin, titled "Reply declaration of Adv. Guy Gissin in support
20 of Petitioner's verified petition under Chapter 15 of the
21 Bankruptcy Code for Recognition of a Foreign Main Proceeding."
22 And "Motion for Provisional Relief for a Preliminary
23 Injunction." I'll mark this as Poznanski 2.

24 THE COURT: Okay.

25 (Poznanski Exhibit 2 in evidence.)

Guy Gissin - Cross (Bensinger)

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1 Q Mr. Gissin, I just handed you a document, correct?

2 A Yes.

3 Q Do you recognize this document?

4 A I do.

5 Q What is this document?

6 A This is a declaration that I filed this week. I signed it
7 at the office of my attorneys.

8 Q I'm going to ask you some questions about some of the
9 statements that you made in this declaration. Stating with
10 paragraph 3, I'll read the first sentence. "Israel has been and
11 continues to be the center of SAL's business activities." Is
12 that what this sentence says?

13 A Exactly.

14 Q When you say "Israel has been and continues", what
15 timeframe are you referring to?

16 A I'm referring to starting at 2007, if I'm not mistaken; up
17 until now.

18 Q So your testimony is then that from 2007 until today has
19 been and is the center of SAL's business activities, correct?

20 A Absolutely.

21 Q Okay. If you wouldn't mind turning the page, still in
22 paragraph 3, the first sentence, the first new sentence on that
23 page is the last word on the second line. And it starts with
24 the word SAL. Do you see that?

25 A Yeah.

Guy Gissin - Cross (Bensinger)

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1 Q Okay. I'm going to read this sentence to you piece by
2 piece and ask you some questions. Is that okay?

3 A Sure.

4 Q Okay. So reading from your declaration. "SAL financed its
5 business." How did SAL finance its business?

6 A SAL raised bonds from the public 2007 or so, and then it
7 used those funds in order to purchase through its subsidiaries
8 assets in the states.

9 Q Okay. Now, you mentioned that SAL raised funds through the
10 bond issuance in 2007. Was that issuance completed in 2007?

11 A I think so. I don't recall something else.

12 Q Do you know if SAL ever had a second bond issuance after
13 the one that you just discussed that occurred in 2007?

14 A It might. I don't remember. It might. I don't remember.
15 Anyway, it raised 50 million shekel, which means something like
16 \$13 million or \$12.5 million from the public in Israel.

17 Q So you don't know whether SAL ever financed through a bond
18 offering after 2007 in Israel. Is that correct?

19 A I don't remember. I don't remember that they did. I think
20 they did not. I think they raised the money in 2007. As far as
21 I remember I don't.

22 Q Okay. Now, returning to the sentence. "Including
23 investments through its United States subsidiaries." Now, what
24 investments are you referring to?

25 A The two material assets that SAL purchased in the states

Guy Gissin - Cross (Bensinger)

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1 were one in Nashville and one in Connecticut. And --

2 Q And what type of assets -- I'm sorry.

3 A I'm sorry?

4 Q I'm sorry; I didn't mean to interrupt you. Please
5 continue.

6 A Part of it was through a loan that was granted and was
7 converted to Nashville -- if I'm not mistaken -- into
8 Nashville's property in the 401 Church Street interest.

9 Q What is the nature of these two investments?

10 A Investments in order to receive IRR at the end of the day.

11 Q Well, let me be direct. These were real estate
12 investments?

13 A It was real estate investments through subsidiaries, yeah.

14 Q Okay. And when were these investments made?

15 A It was made in -- most of it was made in 2008 or so. At
16 the beginning. In one or two years after the raising the bonds.

17 Q Now, you testified a minute ago that these are SAL's
18 principal material assets. The only principal assets of SAL,
19 correct?

20 MR. DEVORKIN: Objection. That's not what he said.

21 THE COURT: Sustained. Mischaracterizes his
22 testimony.

23 MR. BENSINGER: Okay. Let me restate it.

24 A It's the main assets. It's not the only assets.

25 Q Okay. So, your testimony is that the main assets of SAL

Guy Gissin - Cross (Bensinger)

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1 are these two pieces of real estate held indirectly through its
2 subsidiaries.

3 A Uh-huh.

4 Q Is that what you testified?

5 A Uh-huh.

6 Q Okay.

7 MR. DEVORKIN: Your Honor, could we just make sure the
8 witness speaks his answers in word form so --

9 THE WITNESS: Sorry.

10 THE COURT: Yes.

11 MR. DEVORKIN: And if you can keep your voice up
12 because it's being recorded, not transcribed.

13 THE WITNESS: I will. No problem.

14 THE COURT: Very good.

15 MR. BENSINGER: Okay.

16 BY MR. BENSINGER:

17 Q You also testified that those main assets were acquired
18 sometime around 2007/2008, is that correct?

19 A That's correct.

20 Q So since the end of 2008 has SAL acquired any assets?

21 A It did not acquire because it was in the process of the
22 main business of SAL. Since that time was the find the solution
23 for the fact that they could not -- maybe I -- I'm sorry. I'll
24 say it again. Starting at 2010 or so, the company was in
25 trouble to find solutions to repay its bonds. The main business

Guy Gissin - Cross (Bensinger)

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1 of SAL was handling the possible realization of those
2 investments and getting the bonds repaid.

3 Q Okay.

4 A And that was all in Israel.

5 Q A little bit further back to your declaration in paragraph
6 3. Four lines before the end of the paragraph. Five lines;
7 excuse me. The sentence begins, "Prior to the appointment of
8 the SAL administrators." Do you see that sentence?

9 A Uh-huh.

10 Q Okay.

11 A I do.

12 Q Thank you. I'm going to read from that sentence. Prior to
13 the appointment of the SAL administrators, SAL's business was
14 managed and controlled in Israel by its board of directors."
15 Can you describe for me the nature of that board of directors of
16 SAL?

17 A Of course. The board of directors of SAL during all those
18 years was, there were 7 directors. 2 are external directors
19 according to Israeli corporate law, which were nominated by the
20 majority of the -- the un-interested shareholders of SAL. The
21 other 5 directors were nominated by the total shareholders of
22 SAL. And they consisted, as far as I remember, most of the time
23 as 3 or 4 that Poznanski offered, and 2 that his fellows who
24 were holding together the controlling company offered to the
25 general meeting of the shareholders.

Guy Gissin - Cross (Bensinger)

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1 Q Now, under Israeli law, how does a board of directors take
2 action?

3 A It's got to convene at least once in a quarter to prove its
4 financials, to publish it, and then they gather together even
5 more than this once they have a deal to do or any transactions
6 to approve.

7 Q So is it fair to say that for the board of directors to
8 take action, it has to convene some sort of a meeting?

9 A They usually do. It might be over the telephone, but yeah.
10 According to -- and some of those must be even in a meeting
11 room.

12 MR. DEVORKIN: I didn't hear the last part.

13 THE WITNESS: Some of those meetings must be handled
14 in a meeting face to face and not over the telephone.

15 Q So to be clear I understand, whenever the board of
16 directors would need to act, it would have to convene a meeting.
17 Sometimes the meeting could be face to face and sometimes it
18 could be electronically meeting. Is that accurate?

19 A Yeah.

20 Q Okay.

21 A And it orders -- if you want me to --

22 MR. DEVORKIN: Your Honor, I'm getting some trouble.
23 I don't know if Your Honor is having trouble with the
24 microphone, but I'm --

25 THE COURT: No. Mr. Gissin, I'm going to ask you to

Guy Gissin - Cross (Bensinger)

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1 try to be a little bit more crisp with your enunciations.

2 THE WITNESS: Okay. I will try.

3 THE COURT: Okay?

4 THE WITNESS: I'm sorry.

5 THE COURT: Very good.

6 THE WITNESS: It's the first time I give evidence in
7 English, so I'm sorry.

8 THE COURT: And I appreciate that. So take your time.
9 I can hear fine.

10 MR. DEVORKIN: I just thought sometimes he was getting
11 too close to the mic and it was breaking up. That's all.

12 THE COURT: There's a sweet spot. You know the
13 expression sweet spot?

14 THE WITNESS: Now, I know it.

15 THE COURT: Okay.

16 A Once again. What?

17 THE COURT: Do we have a question pending? There's no
18 reading --

19 MR. BENSINGER: There's no record?

20 THE COURT: There's no reading back.

21 MR. BENSINGER: Okay.

22 THE COURT: No, there is record. We're recording it.

23 MR. BENSINGER: Okay.

24 THE COURT: But there's no reading back like there
25 might be in state court.

Guy Gissin - Cross (Bensinger)

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1 A The board of directors instructs its officers, the officers
2 of the company, how to take action and give them space to act in
3 this regard.

4 Q Okay. Do you know the last time the board of directors of
5 SAL convened?

6 A I can find it in -- I have all the periodicals. I don't
7 remember. I don't recall right now. But I guess it's somewhere
8 during 2013. Maybe at the beginning of 2014. I don't remember
9 exactly.

10 Q Okay. But to your recollection today, they did not convene
11 after the beginning of 2014, is that correct?

12 A No, I didn't say that. They have. March 2014 -- sorry.
13 In February 2014, there was a bondholder meeting that
14 representatives of the company were adjourned there. And there
15 was a decision to file the requests for liquidation of the
16 company. And while we filed the request for the liquidation
17 during March 2014, we received the signed agreement of the
18 company to do so. And the company approved -- and I think it's
19 one of the exhibits here. Approved that the company does not
20 have any source of funding, and therefore it's got nothing
21 against the liquidation process that we are filing.

22 Q Okay. But I want to make sure I understand exactly what
23 you're saying. So, let me ask you again on that point. Was the
24 meeting in 2014 that you just discussed where the bondholders --
25 the bondholder meeting, was that a board of directors' meeting

Guy Gissin - Cross (Bensinger)

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1 or was that a bondholder meeting or a combination? Can you
2 clarify for me, please?

3 A It was a bondholder meeting where the representatives of
4 the company, which means representative of the board of
5 directors adjourned. So I guess -- I don't know if there was
6 meeting before at the board of directors or not. I don't know.

7 Q Okay. Going back to your declaration, you testify still in
8 paragraph 3 that prior to the appointment of the SAL
9 administrators; I'm skipping a few words, "operated SAL's bank
10 account in Israel." Do you see that?

11 A Operated SAL's bank account in Israel; kept its records in
12 Israel." Yeah, I see.

13 Q Okay. How many bank accounts did SAL have in Israel prior
14 to your appointment as a provisional liquidator?

15 A I don't remember if it was one or two. After our
16 nomination as provisional liquidators, we send letters to all
17 the banks, and they respond, and we transfer any funds. There
18 were no funds in the bank account. But that's the procedure we
19 do every time we are nominated. So we did it at the beginning.
20 I think it was two bank accounts, but I'm not sure.

21 Q Okay. Now, you just stated that when you contacted SAL's
22 banks in Israel, they had no funds in them, correct?

23 A Correct.

24 Q Do you know when the last time is that the bank accounts of
25 SAL were used in Israel?

Guy Gissin - Cross (Bensinger)

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1 A I don't recall. I can check.

2 Q Do you remember approximately when you made the requests
3 from those bank accounts for information?

4 A I don't remember exactly. But usually we do it within a
5 few days after our nomination. So I guess that's what we did.

6 Q And that nomination again was sometime in July of 2013?

7 A No, March. March.

8 Q March. Excuse me. So sometime in or around March of 2014,
9 you contacted the banks and learned that they have no money in
10 them. Is that correct?

11 A That's right.

12 Q And since that time have those bank accounts been used?

13 A No. There is a new bank account in our names or in the
14 names. That's what you do in Israel in a liquidation process.
15 You establish a new bank account. Any movement in the assets,
16 in the financial assets of the company must be through this bank
17 account, which me and Rami, my colleague, are the only ones that
18 have the signatory rights to.

19 Q Again in paragraph 3 of your declaration, it states "Kept
20 its records in Israel." What records did SAL keep in Israel?

21 A SAL has had, during the years, CFO; had secretary of the
22 company; had CPAs that checked its financials. They were
23 looking for -- and it was held in the computers. They were
24 escorted by a lawyer called Eron Quincione, who kept the records
25 for all the meetings and everything.

Guy Gissin - Cross (Bensinger)

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1 Q So the records of SAL were only electronic? Or they were
2 papers records as well?

3 A There were paper records, some of them. Some of them
4 signed; some of them not signed. It was not always proper as it
5 should have been maybe, but it was -- we, as the liquidators and
6 later on as the administrators, absolutely received the
7 documents and we tracked them already.

8 Q And all of these documents came from the attorney that you
9 just mentioned?

10 A It's not only from the attorney, it's from the CPA; it came
11 from the secretary of the company; and (inaudible).

12 Q Again turning to that last sentence of paragraph 3 of the
13 declaration. It states "Managed employees from Israel."

14 A Uh-huh.

15 Q As of October 31, 2014, about a month ago, how many
16 employees did SAL have?

17 A We do not have any employees right now. The employees of
18 the company -- the company does not have funds to -- sorry. The
19 liquidators and the administrators do not have funds to employ
20 employees right now. We are mainly focused on investigating; on
21 interviewing all the managers and looking for the assets and
22 looking for the resources that the company came to its
23 situation.

24 Q When you were appointed as a provisional liquidator, did
25 SAL have employees at that time?

Guy Gissin - Cross (Bensinger)

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1 A I don't remember exactly. It had directors that acted in
2 the name of the company. It had -- yeah, it had. David Cohen,
3 who served as a secretary at that time, I don't think he was
4 paid.

5 Q Okay. So David Cohen served as a secretary --

6 A He was a director and a secretary at that time.

7 Q Does David Cohen still serve as a secretary?

8 A No, he does not. Once we were nominated, all the officers
9 and the board of directors lost its powers and the powers that
10 were granted to us, they are still -- they did not resign, but
11 they're still registered as officers of the company, but they no
12 longer have any powers.

13 Q So, other than directors that were acting in multiple
14 capacities with more than one role, were there any other
15 employees of the company at the time that you were appointed as
16 provisional liquidator?

17 A No, I don't think so.

18 Q Turning again to the end of paragraph 3 in your
19 declaration, it states "Directed the affairs of the U.S.
20 subsidiaries from Israel." How did SAL direct the affairs of
21 the U.S. subsidiaries?

22 A Not too good.

23 Q I'm sorry?

24 A Not so good. They were in contact with the subsidiaries in
25 the states. They were fighting; they were -- I'm sorry.

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1 Fighting is not the right word. They were looking for
2 information. They were asking questions. They were trying to
3 receive data from the American subsidiaries. They hired former
4 CFO of the company named Thrica Govorse in order to try to help
5 them to get to the information. They had a lot of problems
6 receiving information and to do something about the assets.

7 Q Now, you mentioned a few times in your answer the word
8 "they". That they tried to receive data; they --

9 A Members of the board of directors.

10 Q So we're talking about the board of directors, is that
11 correct?

12 A Yeah. Absolutely.

13 Q Okay.

14 A They managed the company at that time, and there was a Mr.
15 Swedloff, who was the CEO of the company at that time. He was
16 one of the members of the board as well if I'm not mistaken.
17 But he was not an employee getting salary from the company. But
18 he was the CEO of the company, and he was ordered by the board
19 of directors to look for this information. And they handled the
20 negotiations with the bondholders at that time to try to find a
21 solution for the information and for possible recovery of the
22 bonds.

23 Q When did the board of directors convene to give this
24 direction to Mr. Swedloff?

25 A I don't remember right now, but I know that Mr. Swedloff is

Guy Gissin - Cross (Bensinger)

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1 the CEO and made contacts with the bondholders and with the
2 subsidiaries in the name of the board of directors. In the name
3 of the company, of course. So as far as I'm concerned, it's in
4 the name of the board of directors.

5 Q Would you please turn to paragraph 7 of the declaration in
6 front of you?

7 A Sure.

8 Q I'm going to read the second sentence of paragraph 7. "We
9 conducted our activities out of my law firm's office, which is
10 located at Habarzel Street, 6th Floor, Tel Aviv, Israel, 69710
11 and Adv. Kogan's office, which is located at 4 Berkowitz Street,
12 the Museum Tower, 23rd Floor, Tel Aviv, 64238, Israel. Is that
13 what it says?

14 A Yes, that's what it says.

15 Q Why didn't you conduct these activities out of SAL's
16 office?

17 A Because we did not have at that time any funds to have a
18 separate office. And even before that, if I'm not mistaken, the
19 company was handled through Eron Quincione's office as I told
20 you before. The company was handled by its board of directors,
21 and through the services that we received from lawyers and
22 others.

23 Q So on October 31, 2014, there was no physical office of the
24 company in Israel, is that correct?

25 MR. DEVORKIN: Objection.

Guy Gissin - Cross (Bensinger)

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1 A It's not correct.

2 Q Where was the physical office of SAL in Israel on October
3 31, 2014?

4 A As far as I know, at the offices of its counsel, at his
5 office. Usually they adjourned and set their meetings sometimes
6 at other places, and the records were kept there.

7 Q So aside from having the ability to utilize counsel's
8 office, was there another office that was SAL's place of
9 business in Israel on October 31, 2014?

10 A '14?

11 Q '14.

12 A 2014? 2014 was a week ago.

13 Q A month ago.

14 A A month ago.

15 Q Correct.

16 A A month ago, there was no -- there was no office of the
17 company. All actions in a company that is liquidated, that does
18 not have employees and does not have factories to deal with,
19 which is a holding company that holds assets and the estate is
20 handled through the liquidator's office. That's what it does
21 usually.

22 Q Prior to being appointed as a liquidator, did SAL have its
23 own physical office in Israel?

24 A It did in the past. It did have offices in Jerusalem and
25 then they passed it to Tel Aviv. I don't remember the exact

Guy Gissin - Cross (Bensinger)

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1 date. They did have office.

2 Q Okay. And then when you were appointed as liquidator that
3 changed, is that correct?

4 A That changed, yeah. We changed the office address to my
5 office or to Rami's office. I don't remember.

6 Q And what happened to the office space that SAL had been
7 using?

8 A I'm sorry. Once again, I'm talking about the past. During
9 the period that was a month before or two months before the
10 liquidation, filing the liquidation motion in Israel, I'm
11 talking about February or March, 2014, the office was -- the
12 formal office of the company was at its attorney's office, Eron
13 Quincione.

14 Q So in February/March of 2014, SAL's only office was at its
15 lawyer's office. Is that correct?

16 A Yeah.

17 Q But at some point prior to that date, it had a physical
18 office.

19 A Absolutely.

20 Q Okay. Do you remember around what date it closed its
21 physical office or moved out of its physical office?

22 A No, I don't recall.

23 Q But it was prior to February or March of 2014, is that
24 correct?

25 A I guess close to that. I don't remember exactly. I know

Guy Gissin - Cross (Bensinger)

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1 that we filed. There was a liquidation filed in Jerusalem at
2 the beginning of 2013 because the office was at Amvo Lamore.
3 It's the name of the street that the office of the company was
4 in Jerusalem.

5 Q But in any event, shortly after you filed the liquidation
6 papers in Israel, the office was closed, is that correct?

7 A Yeah. It was moved into other offices.

8 Q Understood. If I could direct your attention, please, to
9 Paragraph 12 of your declaration? This paragraph references in
10 the first sentence the provisional liquidation order, is that
11 correct?

12 A Yes.

13 Q What is the provisional liquidation order that it's
14 referring to?

15 A When we filed the liquidation request in Israel -- in
16 Israel, usually, when you file a liquidation request, together
17 with it you file a request and especially in place is that the
18 company does not have a factory or something that handles an
19 office or that can handle the company at that time. You file a
20 request for temporary liquidation of provisional liquidators,
21 nomination of provisional liquidators to handle the business of
22 the company. And that's what we did. We were nominated and we
23 started acting.

24 Q And did you start acting when you filed the papers in March
25 of 2014 or after the provisional liquidation order was entered?

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1 A I think it was -- I could not act before the order was
2 given.

3 Q Okay.

4 A And it was given at about a week after, a few days after we
5 filed the request.

6 Q So if I could direct your attention to paragraph 6 of your
7 declaration do you see at the end of that paragraph it discusses
8 the provisional liquidation order?

9 A One second. On page -- page?

10 Q Page 6.

11 A You said chapter 6.

12 Q Excuse me. My apologies. Paragraph 6.

13 A Paragraph 6. "Approaching all the banks"? That's what you
14 mean?

15 Q No. Page 2.

16 A Okay.

17 Q Paragraph 6.

18 A Okay. I'm with you.

19 Q I'll read from the paragraph. "As discussed in paragraph
20 81 of the petition, on March 24, 2014, the Israeli District
21 Court issued a provisional order." Is that provisional order
22 the provisional liquidation that we were just discussing?

23 A Yeah, that's the same.

24 Q Okay. So then from March 24, 2014 until today, you and Mr.
25 Kogan had been acting in your capacity as liquidators pursuant

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1 to that order, is that correct?

2 A Up until July 7 when we had been nominated as special
3 administrators instead of provisional liquidators.

4 Q And did your duties or roles change at that time when you
5 were nominated for a new role?

6 A If you want to go to Israeli liquidation law, I can
7 explain. The basic things are the same activities. It's
8 different in a few things. But we did not change our attitude;
9 we just came to the point that there was no objection to the
10 request. And therefore the order came into force and we were
11 eliminated as special administrators.

12 Q Now, paragraph 6 says that March 24, 2014 is the date that
13 the order was entered, correct?

14 A March 24, 2014, yeah.

15 Q Okay. Can I direct you now to paragraph 12 on page 4?
16 I'll start reading from the beginning. "In accordance with the
17 provisional liquidation order, we also began our investigations
18 and administration in Israel of SAL's assets, which included,
19 but was not limited to the following activities which occurred
20 in Israel (colon)." Do you see where I am in paragraph 12?

21 A Uh-huh. I do.

22 Q "Item 1, providing the notice of proceedings discussed
23 above. Item 2, conducting interviews of former employees." How
24 many interviews of former employees did you or Mr. Kogan
25 conduct?

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1 A Something like ten. Its employees and directors and
2 officers. Both. And CFO. At least ten.

3 Q At least ten?

4 A Yeah.

5 Q Reading further in that paragraph, Item 3. "Meeting with
6 former SAL board members."

7 A I put it together. I meant it together. Okay? The ten is
8 together.

9 Q So when you said a minute ago that you interviewed ten
10 former employees, you meant ten former employees/board members?

11 A Yeah.

12 Q Okay.

13 A I think three or four were employees. I can give you the
14 names if you're interested. No problem.

15 Q Item 4 in paragraph 12. It says "Holding bondholders'
16 meetings."

17 A That's right.

18 Q When did you hold a bondholder meeting?

19 A I don't remember the specific date, but we needed to
20 discuss with the main creditors and they called for meetings.
21 So we went there to report as the bondholders are the main
22 creditors. We went to report and to discuss with them possible
23 actions that might give them relief.

24 Q Do you remember who participated in those bondholder
25 meetings?

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1 A Yes.

2 Q Could you --

3 A In general there were -- usually it's 20 people. I don't
4 remember each one of them, but most of them I know.

5 Q Was Danny Cohen there?

6 A Danny Cohen?

7 Q Yes.

8 A Danny Cohen? Who's Danny Cohen? David Cohen? Danny
9 Turetsky? Who are you looking for? I don't know any Danny
10 Cohen.

11 Q Okay. I apologize. Was Edwin Cohen at the bondholder
12 meetings?

13 A No.

14 Q Was Danny Turetsky at the bondholder meetings?

15 A At that time, I think he did not admit to the meeting. He
16 did not come, but he sent a lawyer from his side, a
17 representative.

18 Q Okay.

19 A He did not. He was no in that meeting. I think it was one
20 or two meetings he did not appear, but he voted.

21 THE COURT: Mr. Bensinger, you've been going for quite
22 a while. I just want to try to keep within the appropriate
23 context here, which is what you've actually argued in your
24 opposition. You argued in your opposition that there is no
25 ongoing business in the country, and therefore that Israel can't

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1 be the COMI. Right?

2 MR. BENSINGER: Correct.

3 THE COURT: So you don't seem to have disputed the
4 fact that the liquidation proceedings are in fact being
5 conducted out of Israel by Mr. Gissin and his colleagues.

6 MR. BENSINGER: Nor have I contested that in my
7 papers, Your Honor.

8 THE COURT: Right. So, I just want to try to keep
9 track of the scope and the relevant of all the questions that
10 you're asking Mr. Gissin. In other words that since you've
11 taken the position that there are no ongoing operations and that
12 Israel can't be the COMI, one might observe that all of this is
13 irrelevant. But I'm going to give you latitude, but I just want
14 to try to you know keep it focused on the scope of what you
15 actually argued, and to make sure that you're familiar with
16 Judge Bernstein's recent ruling in Suntech which deals rather
17 precisely with at least one aspect of the COMI issue.

18 MR. BENSINGER: Your Honor, I'm quite familiar with
19 Judge Bernstein's ruling in Suntech. And in fact the scope of a
20 lot of these questions goes to address facts that were present
21 in that situation that are not present in ours.

22 THE COURT: Okay. All right. Keep going.

23 MR. BENSINGER: Thank you.

24 BY MR. BENSINGER:

25 Q Do you know somebody named Edwin Cohen?

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1 A Yes, I do.

2 Q Who is Edwin Cohen?

3 A As far as I know -- I don't know him personally. I know
4 who he is. I met him once I think many years ago. He is
5 shareholder in the company. He was a shareholder in the company
6 that sold the controlling shares to Eliza Swedloff Company. And
7 he is the owner of a company called Almont. Him and another.
8 Not totally by himself, but he's one of the owners which holds
9 something like 25 percent -- sorry -- 50 percent of the bonds.

10 Q Do you know somebody named Danny Turetsky?

11 A Yes, I do. He's Edwin Cohen's partner. And he sold, as
12 director of the company until the sale of the shares to
13 Swedloff.

14 Q Have you ever represented as an attorney, or whatever the
15 equivalent of an attorney is in Israel, either Mr. Cohen or
16 Turetsky?

17 A No way. Absolutely not.

18 MR. DEVORKIN: Your Honor, I just want to be -- my
19 silence is not an acquiescent that this is relevant. Because
20 we've argued that the conflict issue -- that, I think is where
21 we're going -- isn't germane. But he's here to testify --

22 THE COURT: Right.

23 MR. BENSINGER: -- and I'm not going to try to
24 interrupt or disrupt.

25 THE COURT: Well, the conflict issue, I think the

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1 attempt is to tie that to § 1506.

2 MR. BENSINGER: It is, Your Honor.

3 THE COURT: But I would point out to you that it's
4 rather interesting because a lot of the theme of your arguments
5 is that granting recognition here would constitute this Court
6 playing into the scheme whereby these former shareholders played
7 fast and loose with the court in Israel and the New York Supreme
8 Court. I would point out to you that there are liquidation
9 proceedings pending in Israel in which prior to the appointment
10 of Mr. Gissin and his colleagues your client had the opportunity
11 to go there and complain about the conflict and urge the Israel
12 court to not appoint them. Your client did not do that.

13 So now what you're telling me is I should second-guess
14 the Israeli court's decision but that I shouldn't count and then
15 steer what you say is second-guessing the decisions of the
16 various state courts. There's a little bit of a logical
17 inconsistency with your argument. But I do take very seriously
18 the notion that when a party has had an opportunity to be heard
19 elsewhere in another court and that opportunity has come and
20 gone, I don't second-guess. So I'm not going to cut off your
21 testimony -- your inquiry, but again, let's keep our eye on the
22 ball her.

23 MR. BENSINGER: Your Honor, I understand that the
24 purpose of today's proceeding was to take testimony and not to
25 argue. I feel like I should respond to that point made by the

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1 Court though.

2 THE COURT: Well, you don't have to. You can do that
3 tomorrow. But you know --

4 MR. BENSINGER: I understand the Court's point.

5 THE COURT: -- because the testimony is coming in, I
6 think the point made by counsel simply is that for the sake of
7 letting this go on and be concluded, he's not making relevance
8 objections. So I think that was the point of the statement.

9 MR. DEVORKIN: Yes, Your Honor.

10 THE COURT: You're entitled to --

11 MR. DEVORKIN: It would take more time to argue my
12 objections than just let him testify within reason.

13 THE COURT: Right. So let's just keep going.

14 MR. BENSINGER: Thank you.

15 THE COURT: Okay. You can try to convince me tomorrow
16 that I'm wrong. I don't think it would be appropriate to do it
17 any further in front of the witness.

18 MR. BENSINGER: That's fine with me, Your Honor.

19 BY MR. BENSINGER:

20 Q Do you know if Rami Kogan ever represented Mr. Cohen or Mr.
21 Turetsky as an attorney?

22 A Yes, he did.

23 Q Does he currently represent either Mr. Cohen or Mr.
24 Turetsky as an attorney?

25 A No way.

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1 MR. DEVORKIN: I can't hear you. Please don't go too
2 close.

3 THE WITNESS: Okay.

4 A He does not.

5 Q Which of those two gentlemen, Mr. Cohen and Mr. Turetsky,
6 did Rami Kogan represent in the past?

7 A I don't really know. I think he represented Almont. I
8 think, as far as I know. Almont is the company under control of
9 both of them.

10 Q Okay. But you stated that he does not currently represent
11 Almond, nor --

12 A Absolutely not. And more than this it was clear and
13 directed and said out loud to the official receiver in Israel,
14 and at that meeting that I mentioned before of the bondholders
15 that Rami will not be involved in any way in conducting and
16 checking and investigating anything that is connected to Mr.
17 Turetsky or Mr. Cohen or Almont. And even about Mr. Swedloff an
18 order because there could have been something said. They sold
19 him the shares, etcetera. He is not involved in it in any way.
20 Mr. Turetsky and I, through his lawyer, are having a lot of
21 correspondence and it is intense. One of the reasons I need to
22 be in Israel is because I think, if I'm not mistaken, Sunday or
23 Monday, I'm going to investigate him. It's clearly pure and
24 he's got no connection. Rami Kogan does not have any
25 connections to the investigations or checking or whatever all

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1 the claims that we might, that the liquidation might have
2 against him.

3 Q Under Israel's conflict rules, would Rami Kogan be able to
4 bring an action against his former client?

5 A Yes. But he will not. I will do it. If needed of course.
6 There's no such decision yet, but if needed and if so decided it
7 will be signed and handled by me personally. By my office only.

8 Q Okay. Are you familiar with the litigation that took place
9 in New York in 2012 between Sova Merritt LLC on the one side and
10 Abraham Poznanski and Wells Fargo on the other side in front of
11 Judge Schweitzer?

12 A I heard about it, yeah.

13 Q Did you represent -- I'm sorry; go on.

14 A I heard about it. I'm not familiar with all the details.

15 Q Did you represent any of the parties directly or indirectly
16 in that litigation?

17 A Absolutely not.

18 Q Do you know if Mr. Kogan represented any of the parties
19 directly or indirectly in that litigation?

20 A He might. I don't know. I think so. He might have. I
21 don't know.

22 MR. DEVORKIN: Excuse me. Can I clarify? Did he
23 represent the parties that happen to be in that litigation or
24 was he representing the parties in that litigation? I think the
25 question's unclear.

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1 MR. BENSINGER: I'm happy to clarify the question.

2 THE COURT: Okay. Let's ask it more precisely, okay?

3 MR. BENSINGER: Sure.

4 BY MR. BENSINGER:

5 Q To your knowledge, did Mr. Kogan give legal advice to any
6 party in the litigation of Sova Merritt v. Poznanski and Wells
7 Fargo?

8 A I have no idea.

9 Q To your knowledge at the time that that litigation was
10 occurring, did Mr. Kogan act as an attorney to any of the
11 parties in the Sova Merritt v. Poznanski and Wells Fargo
12 litigation?

13 A I do not know that. I don't have such information. He
14 might. I don't know.

15 Q Okay.

16 MR. BENSINGER: I have no further questions, Your
17 Honor.

18 MR. DEVORKIN: I just have a couple.

19 THE COURT: Any redirect?

20 MR. DEVORKIN: Just a couple.

21 THE COURT: Thank you, Mr. Bensinger.

22 MR. BENSINGER: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. DEVORKIN:

25 Q I have a couple of things. The last point, just so we

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1 clarify. Is it correct that with respect any claims that may
2 arise in the liquidation of SAL that concerned Turetsky, Cohen,
3 Almont or any of their interests, that Mr. Kogan has removed
4 himself from any decisions or activities with respect to those
5 claims?

6 A Absolutely. It was the demand of me and the demand of the
7 bondholders. This was the demand that he will not be involved
8 in it and he did not want to be.

9 Q Do you know whether the official -- just so we're clear.
10 Who is the official receiver?

11 A The official receiver is an Israeli government authority
12 that escrows all the liquidators, temporary liquidators,
13 administrators, etcetera. And we go to him to receive consent
14 for many things, and the escrows. Anything we do usually.

15 Q When you say escrows, I'm not sure what word you're using.

16 A I use escrow because of my bad English maybe, but he
17 assists us.

18 Q Okay.

19 A He works with us and he gives us advice. And on the other
20 end he goes to court and says if something is wrong or whatever.

21 Q That person expresses his opinion to the court if he has
22 to.

23 A Absolutely. The court usually does not take any decision
24 without the opinion of the official receiver.

25 Q And are you aware of whether the official receiver had any

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1 knowledge about prior litigation in which Mr. Kogan represented
2 Turetsky or Cohen, Almont?

3 A Absolutely. As I mentioned before, in 2013, there was the
4 first litigation request in Jerusalem. And Mr. Kogan
5 represented Mr. Turetsky. He represented Mr. Turetsky in Almont
6 at that point.

7 Q And were they opposing or supporting --

8 A They were in the courthouse. Of course.

9 Q Were they opposing or supporting that petition for
10 liquidation?

11 A They were opposing.

12 Q So was the official receiver involved in that 2013 attempt
13 to get liquidation?

14 A Absolutely.

15 Q Okay. So let me just ask you since you're here and you're
16 leaving shortly. What is the name of the official -- strike
17 that. Is there a governmental agency in Israel that regulates
18 securities?

19 A Absolutely. It's the Israeli Securities Authority which is
20 the equivalent to SEC, the Security and Exchange Commission in
21 the United States.

22 Q What's the acronym?

23 A ISA, Israeli Securities Authority.

24 Q And does the ISA have a website?

25 A Yes, it does. isa.gov.il.

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1 Q And on that website does it publish any of the laws of
2 Israel governing public companies?

3 A It does in English and in Hebrew.

4 Q And is there something in Israel known as the company's
5 law, 5759-199?

6 A Yes.

7 MR. DEVORKIN: Can I mark this as -- I think Your
8 Honor could take judicial notice of this, but since I have a
9 copy, can I mark as Petitioner's 1?

10 THE COURT: Okay. If you're asking me to take
11 judicial notice of the laws of Israel -- is that what you're
12 asking me?

13 MR. DEVORKIN: Well, I'm going to put an exhibit in
14 and I'm going to argue from it at some appropriate time.

15 THE COURT: Okay. Mr. Bensinger?

16 MR. BENSINGER: Your Honor, objection.

17 THE COURT: What's your objection?

18 MR. BENSINGER: Objection as this Court can't take
19 judicial notice of the laws of the state of Israel.

20 THE COURT: Okay. You're right, Mr. Bensinger. Well
21 done. I can't take judicial notice of the laws of Israel. You
22 can put them into evidence.

23 MR. DEVORKIN: Well, that's what I'm attempting to do.

24 THE COURT: Okay. But you can't ask me to take
25 judicial of them. You can through --

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1 MR. DEVORKIN: So-warned. I'm warned.

2 THE COURT: You can give them to me and then give them
3 to Mr. Gissin and ask him about them. And I think I, on my own,
4 since they're a body of law, can acquaint myself with them.

5 MR. DEVORKIN: I'm going to mark this as -- what are
6 we up to? I'm just going to mark this as Petitioner's --
7 perhaps it would be easier if we just continued the numbering
8 that we have now so there'll be less confusion.

9 THE COURT: Why don't we change our convention and
10 call the exhibits that have been introduced today trial
11 exhibits. So this will be Trial Exhibit 4 (sic).

12 MR. DEVORKIN: Fine.

13 THE COURT: How about that? So the three that were
14 marked earlier --

15 MR. DEVORKIN: So, we'll use common numbering.

16 THE COURT: Common numbering.

17 MR. DEVORKIN: Okay.

18 THE COURT: Okay?

19 MR. BENSINGER: We only marked two before.

20 THE COURT: Well, I thought we marked the two original
21 declarations and then the reply declarations.

22 MR. BENSINGER: Oh, I only entered the declaration of
23 Guy Gissin, the original declaration of Guy Gissin.

24 MR. DEVORKIN: Well, you're right, Your Honor. We
25 moved a lot of things in.

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1 THE COURT: Wait, I'm sorry. There --

2 MR. BENSINGER: There's the declaration of Lawrence
3 Rosenstock and the objections of

4 THE COURT: Right.

5 MR. BENSINGER: Those two are moved in also

6 THE COURT: So then I'm up to 5?

7 MR. DEVORKIN: I suggest that I call it trial exhibit.
8 And that we'll sort out how many we have and we'll re-marked
9 this --

10 THE COURT: Very good.

11 MR. DEVORKIN: -- subsequent.

12 THE COURT: This is one of the things that I wanted
13 you to have done before you came here today. Okay. So what are
14 you going to call this one?

15 MR. DEVORKIN: I'm just going to --

16 THE COURT: Trial Exhibit 1 for the time being.

17 (Trial Exhibit 6 marked for I.D.)

18 MR. DEVORKIN: I've given a copy of this to the Court.

19 THE COURT: Okay.

20 MR. DEVORKIN: I will supply counsel with another
21 copy.

22 BY MR. DEVORKIN:

23 Q What is Company's Law 57591999?

24 A It's the new Israeli company code from 1999. The number
25 5759 relates to the Hebrew counting years.

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1 Q And is this published in English as well as Hebrew on the
2 ISA website?

3 A It does.

4 Q And is this a copy of that publication?

5 A It is.

6 Q And this copy accurately reflect Israeli Law with respect
7 to -- as stated in here with respect to the companies that are
8 described?

9 A It is. There were amendments I think from last year that
10 is not connected, but it's not relevant. But this is what is
11 right now on the ISA, Israel Securities Authorities' site.

12 THE COURT: Mr. Bensinger, did you have something?

13 MR. BENSINGER: (Non-verbal response.)

14 THE COURT: No? Okay.

15 MR. DEVORKIN: Your Honor, this is admittedly beyond
16 the scope of Mr. Bensinger's examination. But I'm going to ask
17 some questions. If he's going to object on that ground, I
18 concede that. But since Mr. Gissin is here, I thought I would
19 ask him a couple of questions about this. But I can also just
20 cite the sections I want to Your Honor later.

21 THE COURT: Okay. Mr. Bensinger?

22 MR. BENSINGER: I'll object when I hear the questions
23 if I think it's appropriate.

24 MR. DEVORKIN: All right.

25 Q Mr. Gissin, in your petition -- I'm sorry. In your

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1 affidavit, reply affidavit, there is an Exhibit 23 --

2 THE COURT: Are we in the reply declaration?

3 MR. DEVORKIN: Yes.

4 Q -- which you describe as a document obtained during the
5 course of the investigation. Do you see that document?

6 A Yeah. The Limited Liability Company Agreement of Sova
7 Merritt LLC.

8 Q Yes. And it purports to be -- your reply declaration says
9 that it was obtained under subpoena to one of the investors in
10 401 Church LLC.

11 A That's right.

12 Q And 401 Church LLC is the entity that owns the property in
13 Nashville, correct?

14 A Correct.

15 Q And this document purports to be signed for Sovereign
16 Assets LLC by Abraham Poznanski, Manager. And also be Abraham
17 Poznanski. Do you see that?

18 A Yes, I do on page 4.

19 Q And it purports to make Sovereign Assets LLC the sole
20 member of Sova Management LLC, correct?

21 A That's what it does.

22 THE COURT: Mr. Bensinger?

23 MR. BENSINGER: Objection, Your Honor. We are well
24 outside the scope now of my questions.

25 THE COURT: We are well outside the scope. I mean I

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1 think that the document is here. It's been admitted to evidence
2 and I can read it.

3 MR. DEVORKIN: Well, Your Honor, I'm going to move
4 into evidence this trial exhibit, which is Public Company's Law
5 5759.

6 THE COURT: Okay. No objection to that, correct?

7 MR. BENSINGER: None, Your Honor.

8 THE COURT: Okay.

9 (Trial Exhibit 6 in evidence.)

10 Q How long have you been practicing law in Israel?

11 A Since '91.

12 Q And how long have you been serving as a liquidator in
13 Israel?

14 A About ten years.

15 Q And this isn't your first liquidation?

16 A Absolutely not.

17 Q And how many other liquidations have you had?

18 A Ten or more.

19 Q Are you familiar with the Company's Law that's in front of
20 you?

21 A Yeah. And I escrow companies in the capital markets in
22 Israel since I was a paralegal in '89.

23 Q By "in escrow", you mean advise companies?

24 A Advise. Sorry. Escrow doesn't sound good. Okay.

25 Q And in 2013, -- right now as you've done your

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1 investigation, do you know whether the asset that SAL owned
2 through subsidiaries in Connecticut had any net equity to SAL?

3 A Yes, it does.

4 Q In Connecticut?

5 A In Connecticut. Sorry.

6 Q In Connecticut?

7 A In Connecticut, I do not know.

8 Q Okay. And do you know whether there's a mortgage on that
9 property?

10 A I know there's a mortgage and there's a service center.

11 Q And has the servicer moved to foreclose on that?

12 A He did.

13 Q For failure to pay the payments on the mortgage?

14 A Exactly.

15 Q So would it be fair to say that except for claims that he
16 company, SAL, has against various people that the beneficial
17 ownership interest in the Nashville property and the beneficial
18 ownership interest in the Connecticut property were the
19 company's primary assets in 2013?

20 A Absolutely.

21 Q Would the transfer of control or beneficial ownership of
22 one of those two assets constitute an extraordinary transaction
23 under Israeli Law?

24 A Absolutely. Extraordinary transaction is described in
25 Chapter 1 of the Company's Law. I can read it to you if you

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1 want.

2 Q Do you have a specific section in mind?

3 A Yeah.

4 MR. BENSINGER: I would object to this line of
5 questioning.

6 THE COURT: Basis?

7 MR. BENSINGER: It's also outside of the scope of the
8 direct examination and it's not relevant. The nature of the
9 assets is one thing, but whether transfers comply with Israeli
10 Law, there is no discussion about transfers in my cross.

11 THE COURT: Well, I think that one of the problems --
12 I mean this is the problem that we have with the way that this
13 has unfolded, is that at least some of the objectors and I can't
14 recall whether it's yourself, one of the objections has to do
15 with the fact that the current owner of the Nashville property
16 isn't even a subsidiary. So at issue in fact is this transfer.
17 It has been brought into -- an issue of this transfer has been
18 made an issue in this case.

19 And given that the objectors have objected to
20 recognition on § 109 grounds, right; that there's no property.
21 Under Barnett, there has to be property in the United States,
22 right? So they're objecting that the interest in the indirect
23 subsidiaries don't count. And if there's a cause of action,
24 then that counts. So that, yes, it's outside the scope of your
25 cross examination, but it's squarely within the parameters of I

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1 think things that -- issues that people have put in issue.

2 Okay? So, I don't think we're going to go too far afield here.

3 MR. DEVORKIN: No. And also I'd ask Your Honor for
4 some indulgence because Mr. Gissin is not going to be available
5 to testify after Mr. Poznanski testifies, which will --

6 THE COURT: Well, is Mr. Poznanski testifying?

7 MR. BENSINGER: I'll make that determination after the
8 hearing, Your Honor.

9 MR. DEVORKIN: So he may testify.

10 THE COURT: See that's the problem that we have now
11 because of the confused way in which we've been proceeding. So
12 if you are holding open the possibility that those questions
13 might be asked of Posnanski, we don't what the scope -- (A), we
14 don't know if he's going to appear; (B) We don't know what he's
15 going to be asked. So then I think it's appropriate to make the
16 record now and you can move to strike it from the record later
17 if you'd like.

18 I mean I don't know -- I'm not thrilled about the way
19 this has played out. I pride myself in conducting things in a
20 very orderly fashion. So, I'm just trying to do the best that I
21 can for all of you without prejudicing anybody's rights.

22 MR. BENSINGER: Your Honor, we've already told Mr.
23 Devorkin that if Mr. Gissin needs to or wants to return to
24 Israel and continue his testimony via videos conference or
25 something else --

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1 THE COURT: But again, Mr. Bensinger, and I mean this
2 in the nicest possible way, I get to make those decisions. I
3 get to decide whether somebody gets to testify by declaration or
4 by telephone or by video. And it's important to me, as the
5 trier of fact, to have a witness sitting there so that I can
6 look at him or her. So that's not okay with me.

7 MR. BENSINGER: Okay.

8 THE COURT: And had we planned this better, we would
9 have avoided this entire situation. And again, I didn't ask for
10 anybody to testify. I just asked what your plans were. So, we
11 are where we are. I think you ought to continue, make the
12 record, and then Mr. Bensinger, if it turns out that -- these
13 questions turn out to not be germane to anything you asked Mr.
14 Poznanski, or if you determine not to call him, we can strike it
15 from the record.

16 MR. BENSINGER: Okay, Your Honor, is there any way we
17 can notate the record where we are, and that questions from this
18 point will be struck if we don't call Mr. Poznanski?

19 THE COURT: The record will reflect this very
20 conversation that we're having --

21 MR. BENSINGER: Okay.

22 THE COURT: -- so we will know.

23 MR. BENSINGER: Thank you, Your Honor.

24 THE COURT: All right? Thank you.

25 BY MR. DEVORKIN:

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1 Q First of all, have you done anything to examine the records
2 of SAL that existed before the liquidation began to ascertain
3 whether there were any board meetings of SAL in 2013 or any
4 other time to consider the subject of the document and the
5 transaction that's reflected in Exhibit 23?

6 A Absolutely not. There was no such meeting.

7 Q The first question is did you do anything that --

8 A I did a lot.

9 Q And did you do anything to determine whether there were any
10 shareholder -- general shareholder meetings called with respect
11 to the subject matter of the transaction that's purported to be
12 reflected in that Exhibit 23?

13 A Absolutely. There were none.

14 Q You investigated and there were none?

15 A Investigated and any call for a meeting of a public company
16 in Israel should be published on the ISEA website.

17 Q And what is ISEA?

18 A ISA, I'm sorry.

19 Q All right.

20 A Israel Securities Authority.

21 Q All right.

22 A And there were none of those.

23 Q Okay. Is there any provision of this trial exhibit,
24 Company's Law 5759 which addresses what authority the company
25 has to obtain to engage in a transaction with a director or with

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1 an officer?

2 A Yes.

3 Q Could you just direct the Court's attention to those
4 sections?

5 A It starts as Section 268 at page 83. The Chapter 5,
6 Transactions of Interested Parties. Start at the bottom of page
7 82, and Section 268 is at page 83. And it goes until 283 if I'm
8 not mistaken -- 284.

9 Q And what, if any, procedures have to be followed under
10 Company's Law 5759 for a public company to transfer a major
11 asset either to an officer or a director or to an entity
12 controlled by an officer or director? Could you take us through
13 that?

14 A Yes. Any extraordinary deal/transaction that a company
15 does with an interested party, which includes directors,
16 shareholders of over five percent or whatever is subject to the
17 following.

18 Q It would also include director?

19 A Sure. Absolutely. A director and a shareholder and any
20 officer of the company as well. It goes to Section 270, in
21 subsection 4. It's on page 84. It says that an extraordinary
22 transaction of a public company --

23 MR. DEVORKIN: I'm sorry, Your Honor. You don't have
24 a copy?

25 THE COURT: I don't have a copy.

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1 MR. DEVORKIN: I apologize.

2 THE COURT: That's okay. I'm listening, I just don't
3 have a copy. No, you can keep it.

4 MR. DEVORKIN: No, I don't need mine.

5 THE COURT: Okay.

6 MR. DEVORKIN: Let's let the Court catch up.

7 THE COURT: Okay.

8 A It's on page 84, subsection 4. "An extraordinary
9 transaction of a public company with a holder of control
10 therein. Or an extraordinary transaction a public company with
11 another person in which the holder of control is a person of
12 interest, including a private placement." And then I jump over.
13 "As well as the conclusion of the contract by a public company
14 with a holder of control of it. If such person is also an
15 office holder hereof, as to the conditions of his office and the
16 employment. And if he is an employee of the company, but not an
17 officeholder thereof as to his employment.

18 And then these extraordinary transactions should be
19 approved according to Section 275 on page 85. And it says as
20 follows: "A transaction to which a provisions of Section 270,
21 subsection 4, which we just read, apply shall require the
22 approvals by those mentioned below in the following order. The
23 audit committee, which means the committee of the board of
24 directors that consist only of unrelated directors, including
25 the two external directors, then the board of directors, and

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1 then the general meeting provided that one of the following
2 applies:

3 In the count of votes, the majority in the general meeting,
4 includes at least one-third." By the way, it was updated and
5 now it's the majority of the unrelated should approve it. It's
6 a change in the law from last year that does not reflect here.
7 "Of all the votes of those shareholders that do not have a
8 personal interest in the approval of the transaction who were
9 present in the meeting."

10 And when the company wants to approve such a deal, it has
11 to provide a full report of all natures and to show ISA demands;
12 and to have appraisals of such assets. If you want to sell the
13 assets that the public company holds to another person, which is
14 connected, you need to show appraisals and to give time,
15 something like 35 days from the call of the meeting, after the
16 approval of the audit committee and the board of directors in
17 order to approve it this way.

18 Q So you also have to report it to the ISA?

19 A Absolutely. And the ISA usually stops the running of the
20 time because she wants to check it, check the appraisals.
21 Usually it takes two or three months at least.

22 Q Is there a provision in the Company's Law that you have
23 before you as to the validity of a transaction which does not
24 comply with the provisions of 275 or any other provisions that
25 might be applicable?

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1 A Please see Section 280 on page 86, Invalid Transaction.
2 And says "A transaction of the company with an officeholder
3 (which means the director as well) thereof or an extraordinary
4 transaction by a public company with the holder of control
5 thereof should not be valid in respect of the company or the
6 officeholder or holder of control if the transaction is not
7 approved in accordance with the provisions of this chapter."
8 Which means 275 that we just read. "Is not approved in
9 accordance with the provision of this chapter, or if a
10 substantial defect has occurred in that approval process or if
11 the transaction was affected in a way that deviated
12 substantially from the terms of the approval."

13 Q Okay. Now, in two thousand and -- let's take it a year --
14 2011, did SAL have a board of directors?

15 A Sure.

16 Q And it had how many members again?

17 A Seven.,

18 Q And three were elected by Mr. Poznanski?

19 A No. The election --

20 Q Or nominated, I'm sorry. Three were nominated by Mr.
21 Poznanski, correct?

22 A The election is by the general meeting. According to the
23 agreement, the shareholder's agreement that I know he had with
24 Almont, he had the right to ask to call for three of the
25 directors.

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1 Q And Almont had the right to call for how many?

2 A Two.

3 Q And jointly they had the right to call for two external?

4 A It's not right, you have to.

5 Q Okay.

6 A According to law.

7 Q What are the duties of an external director in Israel?

8 A External director should be one that is not connected to
9 the controlling shareholder or to the company in any way. He
10 represents the public at the end of the day in the eyes of the
11 ISA.

12 Q And is there a mechanism in Israel to remove or change
13 external directors?

14 A Yes, there is. It can be only once in three years at the
15 general meeting. You cannot remove him during his period. You
16 do not vote for him during the annual meetings. Only once in
17 three years you can ask to nominate somebody else.

18 Q So once external directors are appointed and serve, who
19 votes on whether new external directors should serve in their
20 place?

21 A The only votes that are countable in an annual meeting that
22 the company asks to nominate external directors, is only the
23 unrelated parties -- shareholders. Sorry.

24 Q Okay. Between 2011 and 2014 when the liquidation was
25 filed, do you know whether there were any changes in the members

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1 of the board of directors?

2 A Not that I recall.

3 Q And --

4 A In the external director you mean?

5 Q External director, yes.

6 A Yes. Because the other director, as I said before,
7 Turetsky resigned and then they sold the shares Swedloff.

8 Q Okay.

9 MR. DEVORKIN: I have nothing further, Your Honor.

10 THE COURT: Can I -- before you sit down, can I ask
11 you a few questions, please?

12 THE WITNESS: Sure.

13 THE COURT: How is it that you and your firm are being
14 paid for the services you rendered in this proceeding?

15 THE WITNESS: According to Israeli Law, the only
16 payment I can receive is by the decision of court, according to
17 regulations, specific regulations for payments.

18 THE COURT: But if you -- let me ask the question a
19 different way. If you don't recover any assets --

20 THE WITNESS: Unfortunately, I waste my time.

21 THE COURT: -- will you not get paid?

22 THE WITNESS: Yeah.

23 THE COURT: Yes?

24 THE WITNESS: Nobody pays. If you need --

25 THE COURT: If you do not recover -- let me state it

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1 differently. You will only be paid if you recover --

2 THE WITNESS: Exactly.

3 THE COURT: -- assets for the benefit of all the
4 creditors?

5 THE WITNESS: Exactly.

6 THE COURT: And then under Israeli Law, do you and
7 your firm receive a priority of payment? In other words, you're
8 paid first, and then the creditors --

9 THE WITNESS: Yes.

10 THE COURT: -- would share according to a plan of
11 liquidation?

12 THE WITNESS: It is called liquidation expenses. We
13 are part of the liquidation expenses that comes before the
14 creditors. But the sum is subject to what we can repay.

15 THE COURT: Okay. Thank you.

16 CONT'D REDIRECT EXAMINATION

17 BY MR. DEVORKIN:

18 Q You have to submit an application to the Court to show
19 receiver?

20 A Yes, of course.

21 Q And they have to approve it?

22 A It will never been approved without the official receiver
23 telling the court what he thinks about it and that it suits
24 their regulations, unfortunately.

25 THE COURT: Okay. All right.

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1 MR. DEVORKIN: I have nothing further.

2 THE COURT: Anything further, Mr. Bensinger?

3 MR. BENSINGER: Nothing further, Your Honor.

4 THE COURT: All right. Anyone else, any questions?

5 (No response.)

6 THE COURT: Okay. Mr. Gissin, thank you very much.

7 You're excused. Okay. So, I think that's all we agreed to do
8 today. I'd like to have a little clarity around what we're
9 doing tomorrow. Whether Mr. Poznanski is coming. Is that to be
10 determined yet?

11 MR. BENSINGER: Being determined as we sit here, Your
12 Honor.

13 THE COURT: Pardon me?

14 MR. BENSINGER: It's being determined as we sit here.

15 THE COURT: It's being determined, but it hasn't yet
16 been determined. When do you propose to let everyone else know
17 whether or not Mr. Poznanski will be joining us tomorrow? I
18 think we need to have a little bit of a plan for tomorrow.

19 MR. BENSINGER: I agree. I can let everybody know
20 within I would say 20 minutes of us adjourning this hearing.

21 THE COURT: Okay. And he would be the only witness
22 that we're calling tomorrow, and then we would just have
23 argument on the petition and on the various objections. Yes?

24 MR. DEVORKIN: Yes.

25 MR. BENSINGER: Correct, Your Honor.

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1 THE COURT: Okay.

2 MR. DEVORKIN: That's correct.

3 THE COURT: All right. Could I ask that when the
4 determination is made, you simply inform chambers as to whether
5 or not we'll be seeing Mr. Poznanski? You can copy the other
6 parties.

7 MR. BENSINGER: Certainly, Your Honor.

8 THE COURT: All right? Okay. Thank you very much.
9 Thank you for rising to the challenge.

10 MR. CAVALIERE: Your Honor, if I could just comment.
11 One quick --

12 THE COURT: Yes.

13 MR. CAVALIERE: It's a factual question. But my
14 understanding is that Mr. Poznanski had a deposition back on
15 November 25 in connection with this matter. Did that go
16 forward?

17 MR. DEVORKIN: No. He had a 2004 examination, not a
18 deposition on this matter.

19 MR. CAVALIERE: Okay. Just for the record, the 2004
20 examination, we had asked to monitor and we were denied that
21 right. To the extent that there's a transcript associated with
22 that deposition, that's going to be relevant to tomorrow's
23 testimony. We would like a copy of that transcript so we could
24 ascertain whether we want to ask Mr. Poznanski any questions as
25 well and be prepared to address that. We asked for the

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1 transcripts and they were --

2 THE COURT: Is there a transcript available yet?

3 MR. DEVORKIN: There's a rough transcript. My
4 position has been, Your Honor, that this is part of what's
5 called a trustee's investigation, which is a private
6 investigation. It's confidential. And it is not shared with
7 all interested parties in the proceeding in my experience. I've
8 represented trustees for 30 years and I'm not saying it never
9 happens under special compelling circumstances, but the general
10 rule is that the trustee is entitled to investigate
11 confidentially without sharing on the entire record what he's
12 doing and what's learning. And I would object to sharing that
13 transcript and having --

14 THE COURT: Well, Mr. Bensinger has a copy, right?

15 MR. DEVORKIN: No.

16 MR. BENSINGER: Not yet.

17 MR. DEVORKIN: He doesn't have a copy yet.

18 THE COURT: But he was at the deposition? You were at
19 the deposition, right?

20 MR. BENSINGER: I was. I will have a copy.

21 MR. DEVORKIN: No, he will have a copy, but he's a
22 witness. And the witness has a copy.

23 THE COURT: Right.

24 MR. DEVORKIN: But outside parties generally do not
25 have copies. They don't generally attend.

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1 THE COURT: Okay.

2 MR. DEVORKIN: They don't look over the trustee's
3 shoulder.

4 THE COURT: Look. We're getting -- this is spinning
5 way out of control. Okay? And I am becoming increasingly
6 unhappy. To the extent that you're going to put Poznanski on
7 the stand, and you're going to seek to impeach him with his 2004
8 testimony, then it's open season and the other parties would be
9 entitled to have the transcript so that they could do their own
10 impeach or impeach your impeachment. So you have to make a
11 choice.

12 Now, Mr. Bensinger, if you're going to use it, I don't
13 know why you would use it, but if you're going to use it, I
14 suppose we would face a similar issue. But I can't imagine
15 frankly that you're going to use it if you're going to bring him
16 in.

17 MR. BENSINGER: I don't plan on it, Your Honor.

18 THE COURT: So, it's your call.

19 MR. DEVORKIN: I think it's premature. We don't know
20 whether he's testifying.

21 THE COURT: I understand. If he's going to testify,
22 and if you're going to impeach him with something that he said
23 in his 2004 examination, you're going to have to make it
24 available to these folks. We'll have to take a recess in order
25 for you to look at it.

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1 MR. DEVORKIN: My view on that would be, Your Honor,
2 not to have to waste the Court's time tomorrow. If Mr.
3 Bensinger informs us tonight that he's going to call Mr.
4 Poznanski as a witness, I will send counsel for the Nashville
5 Plaintiffs a digital copy of the rough tonight.

6 MR. CAVALIERE: Thank you.

7 THE COURT: Okay. I mean to the extent that there's
8 anything in there that's truly confidential, and qualifies for
9 sealing, consistent with the provisions of the Bankruptcy Code,
10 I'll hear you on that. But generally speaking, if you're going
11 to use it, it opens it all up.

12 MR. DEVORKIN: Right. But I would request if he does
13 not wind up testifying and it's not used --

14 THE COURT: Then we'll cross --

15 MR. DEVORKIN: -- that it be returned and it not be
16 disseminated beyond its use for this hearing yet.

17 THE COURT: We'll cross that bridge when we come to
18 it. We've got enough to deal with.

19 MR. DEVORKIN: So that we understand --

20 THE COURT: Yes.

21 MR. DEVORKIN: -- until that happens, they're not
22 going to disseminate it and copy it.

23 THE COURT: It's counsels' eyes only.

24 MR. CAVALIERE: Absolutely, Your Honor.

25 MR. ROSENSTOCK: Yes.

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1 THE COURT: Okay. It's counsels' eyes only for the
2 purposes of this proceeding only. It's not to be used
3 consistent with the objection that was made last time during the
4 deposition. It should not be used as an end-run around
5 proceedings consistent with the Federal Rules of Civil Procedure
6 or beyond what the state court might have ordered, etcetera,
7 etcetera. Am I making sense?

8 MR. CAVALIERE: Yes.

9 MR. ROSENSTOCK: Absolutely.

10 MR. BENSINGER: Absolutely. Your Honor.

11 THE COURT: Okay.

12 MR. BENSINGER: Your Honor, one other small piece of
13 housekeeping.

14 THE COURT: Yes.

15 MR. BENSINGER: There's a 30-page document, Exhibit K,
16 to Mr. Poznanski's opposition, which is in Hebrew. As I
17 indicated in the opposition, he was having it translated and the
18 translator took a bit longer than anticipated. But I do now
19 have the translation, and I would just want to know would the
20 Court prefer that I overnight FedEx; bring it tomorrow; fax it,
21 email it in?

22 THE COURT: Well, how are you proving up the validity
23 of the translation?

24 MR. BENSINGER: Sure. Well, all the documents that
25 have been put in in Hebrew that have been translated come with

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1 the translator certification.

2 THE COURT: Yes.

3 MR. BENSINGER: There's one with this as well.

4 THE COURT: There's one? Okay.

5 MR. BENSINGER: Yeah.

6 MR. DEVORKIN: That's fine. I would just like him to
7 email it to me tonight.

8 MR. BENSINGER: Oh, I'll send it to all parties, of
9 course.

10 THE COURT: Okay. Fine.

11 MR. BENSINGER: I just want to know how to get it to
12 the Court.

13 THE COURT: That's fine. You can either -- you can
14 PDF it to us, and bring a hard copy. That's fine.

15 MR. BENSINGER: Okay.

16 THE COURT: But it will have a certification similar
17 to the other documents?

18 MR. BENSINGER: Yes. This could be the dispositive
19 exhibit, Your Honor.

20 THE COURT: I wish I could say that I read Hebrew, but
21 unfortunately I didn't get to go to Hebrew school. So I don't.

22 MR. BENSINGER: Okay. Thank you very much, Your
23 Honor.

24 MR. DEVORKIN: Thank you, Your Honor.

25 THE COURT: Anything else?

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1 (No response.)

2 THE COURT: All right. Safe travels back to Israel.

3 Thank you very much.

4 MR. GISSIN: Thank you so much.

5 THE COURT: One o'clock tomorrow.

6 ALL COUNSEL: Thank you, Your Honor.

7 THE COURT: Right? One o'clock tomorrow.

8 (Pause.)

9 MR. DEVORKIN: Oh, Your Honor, I think we should be
10 back on the record.

11 THE COURT: Hold on, folks.

12 MR. DEVORKIN: I just request that Your Honor continue
13 the restraining order until tomorrow.

14 THE COURT: Okay. Are we back on the record now?

15 COURTROOM DEPUTY: Yes.

16 MR. BENSINGER: I think we agreed it would be on till
17 Thursday. I think we did agree. Or we can continue it to
18 tomorrow.

19 MR. ROSENSTOCK: Well, we have a consent order that
20 was signed.

21 THE COURT: I would like the restraining order to
22 continue until I can give you a ruling, which --

23 MR. DEVORKIN: That's fine with me.

24 THE COURT: I don't know when.

25 MR. DEVORKIN: And I'd request that, but I'm just

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1 requesting for the moment until tomorrow.

2 THE COURT: I may be in a position to do that
3 tomorrow; I may not. I just don't -- I don't know.

4 MR. DEVORKIN: Well, I was going to make that
5 application at the end of the hearing.

6 THE COURT: Okay.

7 MR. DEVORKIN: But I'm just taking things one step at
8 a time.

9 THE COURT: But at least we have to get it until
10 tomorrow.

11 MR. ROSENSTOCK: We agreed for tomorrow, Your Honor.
12 Everybody had agreed till --

13 THE COURT: Had agreed till tomorrow.

14 MR. ROSENSTOCK: Right.

15 MR. DEVORKIN: Right. But it's not on the record.
16 That's why I'm putting it on the record.

17 THE COURT: Okay. But let us remember that in the
18 event that I'm not in the position to give you a ruling tomorrow
19 I would expect that the parties would agree that it continue
20 until there is a ruling. All right? Okay. Thank you.

21 - oOo -

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CERTIFICATION

I, Rochelle V. Grant, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: August 27, 2015

A handwritten signature in cursive script that reads "Rochelle V. Grant". The signature is written in black ink and is positioned above a horizontal line.

Signature of Approved Transcriber

I N D E X

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<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Re-Cross</u>
Guy Gissin				
By Mr. Bensinger		25		
By Mr. Devorkin			55/75	

E X H I B I T S

<u>Nos</u>	<u>Description</u>	<u>Marked</u>	<u>Admit</u>
T-1	Guy Gissin's declaration		23
T-2	Rami Kogan's declaration		23
T-3	Guy Gissin's reply declaration		23
T-4	Abraham Poznanski's declaration		24
T-5	Nashville declaration		25
T-6	Israeli Public Company's Law 5759	60	63